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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,046	02/04/2004	Thomas W. Schrimsher SR.	228-002.001 Shrock	3921
31179	7590	10/09/2007		
BOTKIN & HALL, LLP 105 E. JEFFERSON BLVD. SUITE 400 SOUTH BEND, IN 46601			EXAMINER EDELL, JOSEPH F	
			ART UNIT 3636	PAPER NUMBER
			MAIL DATE 10/09/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/772,046	SCHRIMSHER, THOMAS W.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Joseph F. Edell	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 310,255 to Cook in view of U.S. Patent No. 5,528,778 to Shrock et al.

Cook discloses a seating that is basically the same as that recited in claims 1-17 except that the main supporting member lacks seat and back frames, as recited in the claims. See Figures 1 and 2 of Cook for the teaching that the seating has a main supporting member *B* pivotally connected to a fixed support *D* mounted to a vertical wall *G* and being movable between a vertical storage position adjacent to the wall and a horizontal use position, a leg *N* pivotally mounted on the main support member and movable between an active position projecting from the main support member when the main supporting member is in the use position and a folded position toward the wall and tucked along the main supporting member when the main supporting member is in the storage position, and an actuating link *P* pivotally connected to the fixed support and engaging the leg to move the leg from the active position to the folded position when the main supporting member is moved from the use position to the storage position and from the folded position to the active position as the main supporting member is moved

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from the storage position to the use position wherein the actuating link is a rigid member pivotally connected to the leg between opposite ends thereof and pivotally connected to the fixed support, and the arm *m* being immovable and the actuating link being movable and connected to the immovable arm through a pivot connection.

Shrock et al. show a seating similar to that of Cook wherein the seating has a main supporting member 18 (see Fig. 3), a seat frame 70 and a back frame 72 each slidably mounted on the main supporting member and movable relative to one another and to the main supporting member toward and away from the rear portion of the main supporting member between a seating position (Fig. 5) in which the back frame is inclined with respect to the seat frame with the main supporting member in the use position and into a flat horizontal auxiliary position (Fig. 3) wherein the seat and back frames lie in the same plane and are flush with one another to define a horizontal flat surface, the seat and back frames are each pivotally mounted on the main supporting member, and a linkage means 50,52,62,64,66 connects the seat and back frames to the main supporting member. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seating of Cook such that the seating has a seat frame and a back frame each movably/slidably mounted on the main supporting member and movable relative to one another and to the main support member toward and away from the wall between a seating position in which the back frame is inclined with respect to the seat frame with the main supporting member in the use position and into a flat horizontal auxiliary position wherein the seat and back frames lie in the same plane permitting the main support member to be moved

into the storage position and being flush with one another to define a horizontal flat surface when the main supporting member is in the use position and extending vertically when the main supporting member is moved into the storage position; the seat and back frames are each pivotally mounted on the main supporting member, and a linkage means connects the seat and back frames to the main supporting member, such as the seating disclosed by Shrock et al. One would have been motivated to make such a modification in view of the suggestion in Shrock et al. that the relatively moveable seat and back frame allow the seating to move between a seat position and a bed position.

Claims 8 and 12 use "linkage means" and "supporting means," which each fails to invoke 35 U.S.C. 112, sixth paragraph, because it does not meet the three prong analysis set forth in MPEP § 2181.

### ***Response to Arguments***

3. Applicant's arguments filed 11 July 2007 have been fully considered but they are not persuasive. Applicant argues that the teachings of Cook and Shrock et al. cannot be properly combined. In pertinent part, Applicant argues that combining the teachings of Cook in view of Shrock et al. would impermissibly require modification of the relative lengths of Cook's bed components. However, any modification of the relative lengths of Cook's bed components would have been obvious to one skilled in the art in view of the teachings in Shrock et al. See Diagram A below for an illustration as to the simple

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modification of Cook in view of Shrock et al wherein the frame E of Cook could simply be enlarged to accommodate the structural configuration taught in Shrock et al.

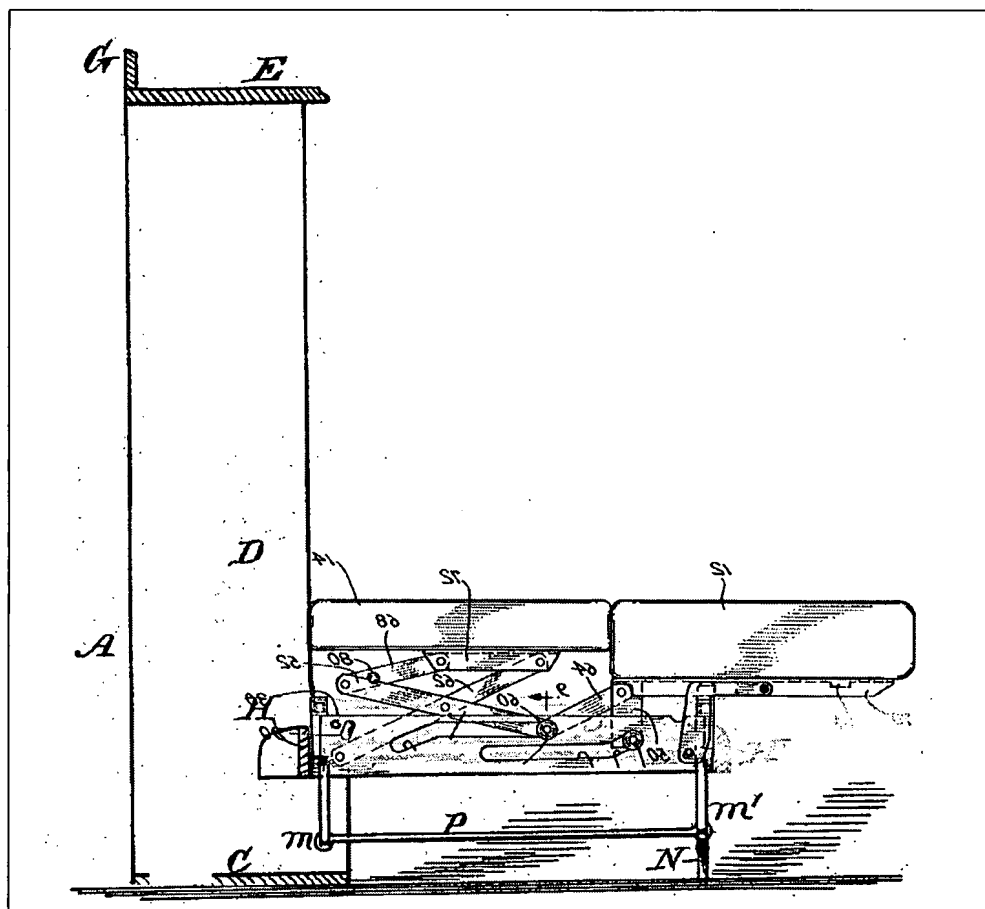


Diagram A - Illustration of Potential Combination of the Teachings of Cook and Shrock et al.

Figure 1 of Cook teaches the seating is mounted to a vertical wall, and a main supporting member moveable between a vertical storage position and a horizontal use position. Figure 3 of Shrock et al. clearly teaches that having a convertible bed extend beyond a framing and legs is well known and obvious to one skilled in the art. Moreover, the instant application appears to simply arrange old elements of the seating

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art wherein each element performs the same function that it is known to perform to yield what one skilled in the art would expect from the arrangement. In view of *KSR Int'l v. Teleflex Inc.*, this type of combination was held obvious. 127 S. Ct. 1727, 1740 (2007). Lastly, Please note that one cannot show nonobviousness by attacking references individually where the rejection is based on the combination of references. Examiner has considered Applicants argument regarding the individual structural elements of Cook and Shrock et al. but finds the claims obvious in view of the combination of these references. Therefore, Examiner maintains the rejection of claims 1-17.

### ***Conclusion***


4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JOE EDELL  
PRIMARY EXAMINER

Joe Edell  
October 1, 2007